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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Simplification of the) CC Docket No. 92-296
Depreciation Prescription)
Process)

OPPOSITION TO RECONSIDERATION PETITIONS

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, American Telephone and Telegraph Company ("AT&T") hereby opposes the petitions filed by other parties for reconsideration of the Commission's Depreciation Simplification Order in this proceeding,¹ to the extent that petitioners seek reversal of the Commission's determination that the "price cap carrier option" for depreciation simplification should not be extended at this time to local exchange carriers ("LECs") subject to price cap regulation.²

¹ Simplification of the Depreciation Simplification Process, CC Docket No. 92-296, Report and Order, FCC 93-452, released October 20, 1993 ("Depreciation Simplification Order").

² Petitions for reconsideration were filed by the Ameritech Operating Companies ("Ameritech"); the Bell Atlantic Telephone Companies ("Bell Atlantic"); BellSouth Telecommunications, Inc. ("BellSouth"); Cincinnati Bell Telephone Company ("CBT"); GTE Service Corporation ("GTE"); Pacific Bell and Nevada Bell ("Pacific Companies"); The Southern New England Telephone Company ("SNET"); Southwestern Bell Telephone Company ("Southwestern Bell"); U S WEST Communications, Inc. ("U S WEST"); and the United States Telephone Association ("USTA").

As shown below, the petitions merely reiterate arguments already considered and rejected in the Depreciation Simplification Order. These pleadings fail to demonstrate any basis to question the Commission's determination that permitting the LECs to use this depreciation option would "undermine a vital component of the LEC price cap plan at this time."³

This proceeding was initiated to consider procedures for simplifying the Commission's existing depreciation prescription process pursuant to Section 220(b) of the Communications Act which, as the Commission recognized, imposed serious compliance burdens on carriers. The proposed simplification methods included a "price cap carrier option" for carriers subject to incentive regulation. Under this proposed option, those carriers would have been allowed to file their requested depreciation rates with the Commission without supporting data, other than the changes in depreciation expense the proposed rates would produce.

After careful evaluation of a voluminous record, and applying its own extensive experience with the depreciation prescription process, the Commission found that a modified form of the price cap carrier option should be adopted for AT&T "given its regulatory scheme

³ Depreciation Simplification Order, ¶ 43.

and competitive position."⁴ However, the Commission found that this procedure should not be adopted for the LECs at this time, because those carriers' regulatory and competitive posture does not yet "justif[y] a depreciation prescription process as flexible and streamlined as the price cap carrier option."⁵ The petitioners contend that this conclusion was somehow unwarranted.

The Depreciation Simplification Order's finding that the price cap carrier option is appropriate for AT&T, but not for the LECs, is premised in part on a critical difference in the carriers' respective price cap plans. As the Commission pointed out (¶¶ 44, 92), unlike AT&T the LECs are subject to a sharing mechanism that links their realized rates of return (which are based in part on

⁴ Id., ¶ 8. The Commission required AT&T to submit the following additional information with its depreciation filings: (1) generation data; (2) a summary of basic factors underlying proposed depreciation rates, by account; and (3) narrative support for the basic factors. Id., ¶ 93.

⁵ Id., ¶ 5. The Commission instead adopted for price cap LECs a modified form of the proposed "basic factor range option," under which the Commission over time will establish ranges for projection life and future net salvage estimates for many accounts, and allow the LECs to select basic factors from within those ranges. Id., ¶ 6. As an alternative to treatment under the price cap carrier option, the LECs' reconsideration petitions request further modifications of the basic factors range option adopted by the Commission. AT&T takes no position with respect to the specific modifications requested by the LECs, provided that any revisions to the Commission's simplified depreciation treatment do not result in de facto price cap carrier treatment.

Commission-prescribed depreciation) to their allowable prices. LECs thus have the ability and incentive, the Commission found, to manipulate their depreciation to "manage" their earnings to reduce or eliminate entirely their sharing obligations. Id., ¶ 46.

The petitioners do not seriously dispute the fact that the Commission's price cap plan creates a powerful incentive for LECs to adjust their depreciation levels so as to subvert the sharing mechanism.⁶ Rather these parties assert that other regulatory and accounting safeguards -- most particularly, adherence to generally accepted accounting principles ("GAAP") -- are adequate to protect access ratepayers against potential LEC abuse of

⁶ SNET suggests (pp. 6-7) that such manipulation of earnings by the LECs is unlikely because understatement of current earnings could lead to later earnings overstatements and consequent larger sharing obligations. SNET conveniently ignores the LECs' ongoing campaign to eliminate the sharing mechanism which, were it to succeed, would obviate any future "penalty" for overstating depreciation to reduce earnings in the near term.

Ameritech also claims (pp. 4-5) that the threat that LECs will manage their earnings under the price cap carrier option is purely "theoretical," because price cap regulation creates countervailing incentives for LECs to increase productivity and earnings. Ameritech's observation does not detract from the correctness of the Commission's finding (¶ 43 and n.75) that LECs could use depreciation adjustments to subvert the sharing mechanism, without otherwise diminishing their incentives to achieve increased efficiencies.

depreciation rates that would undermine sharing.⁷

However, the Depreciation Simplification Order expressly found (§ 45) that these purported safeguards "do not limit effectively the opportunity and incentive of [LECs] to avoid their sharing obligation," and the petitions do not present any basis for questioning that conclusion.⁸

Similarly, the petitioners challenge the Commission's conclusion (§ 44) that (again unlike AT&T) the LECs do not face "a level of competition that would permit granting the degree of flexibility provided by th[e] price cap carrier] option." Their pleadings point to a variety of developments, including the advent of expanded interconnection for switched and special access transport, which assertedly demonstrate that competition is already

⁷ See Ameritech, p. 7; BellSouth, p. 2; GTE, pp. 3, 5-6; Pacific Companies, pp. 5-7; USTA, pp. 6-7.

⁸ For example, the Commission found that GAAP is an inadequate safeguard because the conservatism principle of financial accounting could be used to justify taking additional depreciation to avoid a LEC's sharing obligation. Depreciation Simplification Order, § 46. None of the petitioners attempts to show any infirmity in that conclusion. Similarly, the Commission found (§ 48) that restricting LECs to filing depreciation rates only in the first quarter of the year, purportedly to reduce the opportunity to game earnings, would require additional regulatory activities that would eliminate any simplification and avoidance of administrative burdens. Those petitioners that reurge this "safeguard" do not attempt to rebut the Commission's finding. See GTE, p. 3.

"sufficiently robust" to justify adoption of this depreciation methodology for the LECs.⁹

Such claims by the LECs that local exchange and exchange access services are already highly competitive are by now familiar, and have been refuted repeatedly in other proceedings.¹⁰ As the Depreciation Simplification Order recognized (§ 44), these arguments demonstrate only that "the LECs face emerging competition in the provision of certain services," not the existence of vigorous actual competition for the full panoply of access offerings. Some of the petitioners' claims are even more exaggerated; for example, several pleadings cite incipient competition from cable television companies as justification for granting LECs the price cap carrier option, even though

⁹ See Pacific Companies, p. 7; see also Ameritech, pp. 5-6; GTE, p. 4; SNET, pp. 3-4; U S WEST, pp. 2-3; USTA, pp. 4-5.

¹⁰ As AT&T has previously demonstrated, even with expanded interconnection for local transport services, interexchange carriers ("IXCs") and competitive access providers ("CAPs") remain dependent upon LECs both for local switching and connections to their customers' premises. Moreover, even with the recent inroads by CAPs in competing with LECs for local transport, the LECs still carry 99 percent of all access traffic. See AT&T Comments filed June 11, 1993 in Petition for a Declaratory Ruling and Related Waiver to Establish a New Regulatory Model for the Ameritech Region (DA 93-481), pp. 7-11; AT&T Comments filed November 1, 1993 in Petition for the United States Telephone Association for Reform of the Interstate Access Rules (RM 83-56), p. 5.

one petitioner candidly concedes that no calls are now carried over such cable facilities.¹¹

In like manner, SNET contends (p. 4) that LECs face competition from personal communications service ("PCS") providers -- despite the fact that licenses for the spectrum recently allocated to PCS have not been awarded yet, and PCS facilities have not yet been constructed.¹² The Pacific Companies make the equally absurd claim (p. 8) that the fact the Commission now prescribes depreciation for only 33 of the 1400 LECs is somehow "an indication of the state of competition for interstate access services." This circumstance simply reflects the undue administrative complexity of prescribing depreciation for the remaining LECs, not the fact that those entities face vigorous competition.¹³ In sum, the Commission was clearly justified in finding that the level of competition the LECs now face does not

¹¹ SNET, pp. 3-4; see also Ameritech, pp. 5-6; U S WEST, pp. 3-4.

¹² See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, FCC 93-451, released October 22, 1993.

¹³ Virtually all of these entities are Tier 2 carriers that not subject to mandatory expanded interconnection, and that serve low traffic rural areas with little attraction to CAPs. These LECs therefore face even less competition than petitioners, contrary to the Pacific Companies apparent claim.

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warrant adopting the price cap carrier option at this time.¹⁴

WHEREFORE, for the reasons stated above, the Commission should refuse to reconsider the Depreciation Simplification Order's conclusion that the price cap carrier option for depreciation simplification should not be extended at this time to price cap LECs.

Respectfully submitted,

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¹⁴ Moreover, none of the petitions acknowledges that the Depreciation Simplification Order recognized the need to allow LECs to accelerate their depreciation to the extent such action is required to respond to competitors' deployment of new technologies. Specifically, the Commission there stated its intent expeditiously to commence a new proceeding to explore methods of making the depreciation prescription process more responsive to changes in the LECs' network infrastructure. See Depreciation Simplification Order, ¶ 56. This action by the Commission fully redresses any legitimate concern on the LECs' part regarding the sufficiency of their depreciation levels.

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 24th day of January, 1994, a copy of the foregoing "Opposition To Reconsideration Petitions" of American Telephone and Telegraph Company was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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